



COMITE MARITIME INTERNATIONAL

30 September 2015

Presidents of NMLAs

Dear President

Questionnaire - Pandemic Response - The Effect on Seafarers and Passengers at Sea

The recent Ebola crisis has, once again, highlighted the difficulties encountered by shipowners when pandemics such as those which have occurred in the past in relation to Avian flu, SARS, Chikungunya and more recently, Ebola, have occurred.

The CMI has agreed to assist the IMO, the International Chamber of Shipping (ICS) and Cruise Lines International Association (CLIA) to ascertain the legal position in as many countries as possible concerning their response, or likely response to medical emergencies involving seafarers or passengers during such situations. To that end the questionnaire below is being sent to MLAs with a view to finding out as much information as possible concerning local laws in this area.

Attached is a summary of some of the relevant provisions of international law to which the below Questionnaire refers.

Questionnaire

1. Is your jurisdiction a member of the World Health Organisation?
2. Has your jurisdiction given effect under its domestic law to the International Health Regulations (2005)?
3. Has your jurisdiction ratified the IMO-MLC 2006 Convention?
4. What steps have been taken within your jurisdiction to give effect to the IMO-MLC 2006 Convention?
5. Has your jurisdiction ratified the IMO Facilitation of Maritime Traffic Convention 1965 (FAL Convention)?
6. What steps have been taken within your jurisdiction to give effect to the FAL Convention?
7. Are you aware if your jurisdiction has denied free pratique to a vessel during any of the following pandemics: Avian flu; SARS; Chikungunya or MERS?

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8. Are you aware if your jurisdiction has taken any steps to establish the care capacities identified in Sections A and B of Annex 1 of the International Health Regulations, and in particular a "national public health emergency response plan" in compliance with the International Health Regulations?
9. (a) What measures were taken by your jurisdiction during the recent Ebola outbreak?
- (b) Which Department of State or organisation in your jurisdiction was responsible for implementing those measures during the recent Ebola outbreak?
- (c) Were maritime administrations within your jurisdiction consulted in relation to decisions taken within your jurisdiction during the Ebola outbreak?
- (d) Were those who took decisions in your jurisdiction during the Ebola outbreak aware of the requirements of:
- (i) International Health Regulations 2005; and
 - (ii) The FAL Convention 1965 (As Amended); and
 - (iii) The ILO MLC 2006 Convention?
- (e) Were those making the decisions in your jurisdiction in relation to the Ebola outbreak aware of the potential conflict in the requirements between those Regulations and Conventions?

Yours faithfully



Stuart Hetherington

Summary of relevant provisions of International Law

The World Health Organisation (WHO)

All countries which are Members of the United Nations may become members of WHO by accepting its Constitution. There are currently 194 Member States of WHO (a list is attached). The Member States are bound by any of the WHO Regulations, the most important of which are the International Health Regulations (2005). These entered into force on 15 June 2007 and require countries to report certain disease outbreaks and public health events to WHO. For example, under Article 5 "Surveillance" it is provided in paragraph 1 that:

"Each State Party shall develop, strengthen and maintain, as soon as possible but no later than five years from the entry into force of these Regulations for that State Party, the capacity to detect, assess, notify and report events in accordance with these Regulations, as specified in Annex 1."

Article 6 "Notification" provides as follows:

- "1. Each State Party shall assess events occurring within its territory by using the decision instrument in Annex 2. Each State Party shall notify WHO, by the most efficient means of communication available, by way of the National NIHR Focal Point, and within 24 hours of assessment of public health information, of all events which might constitute a public health emergency of international concern within its territory in accordance with the decision instrument, as well as any other measure implemented in response to those events."

Pursuant to Article 12 the Director-General of WHO is required to "determine, on the basis of the information it received, in particular from the State Party within whose territory an event is occurring, whether an event constitutes a public health emergency of international concern in accordance with the criteria and the procedures set out in these Regulations".

Once a public health emergency of international concern has been determined to be occurring, under Article 15 paragraph 1 "Temporary Recommendations", the Director-General is required to "issue temporary recommendations in accordance with the procedures set out in Article 49. Such temporary recommendations may be modified or extended as appropriate, including after it has been determined that a public health emergency of international concern has ended, at which time other temporary recommendations may be issued as necessary for the purpose of preventing or properly detecting its recurrence". Under paragraph 2 of Article 15 it is provided that "temporary recommendations may include health measures to be implemented by the State Party experiencing the public health emergency of international concern, or by other States Parties regarding persons, baggage, cargo, containers, conveyances, goods and/or postal

parcels to prevent or reduce the international spread of disease and avoid unnecessary interference with international traffic".

One of the most significant provisions is contained in Article 18 "Recommendations with respect to persons, baggage, cargo, containers, conveyances, goods and postal parcels":-

"1. Recommendations issued by WHO to States Parties with respect to persons may include the following advice:

- No specific health measures are advised;
- Review travel history in affected areas;
- Review proof of medical examination and any laboratory analysis;
- Require medical examination;
- Review proof of vaccination or other prophylaxis;
- Require vaccination or other prophylaxis;
- Place suspect persons under public health observation;
- Implement quarantine or other health measures for suspect persons;
- Implement isolation and treatment where necessary of affected persons;
- Implement tracing of contacts of suspect or affected persons;
- Refuse entry of suspect and affected persons;
- Refuse entry of unaffected persons to affected areas; and
- Implement exit screening and/or restrictions on persons from affected areas"

There are similar recommendations with respect to "baggage, cargo, containers, conveyancers, goods and postal parcels" in paragraph 2 of Article 18.

Pursuant to Part IV - "Points of Entry" there are general obligations imposed upon States, and more specifically in relation to airports and ports under Article 20 to develop "the capacities provided in Annex 1". Annex 1 (a copy of which is **attached**) is headed "A. Core capacity requirements for surveillance and response". Under paragraph 6 of Annex 1 capacities include:

- "(b) to provide support through specialised staff, laboratory analysis of samples (domestically or through collaborating centres) and logistical assistance (eg equipment, supplies and transport)"

and in sub-paragraph (f):

"To provide by the most efficient means of communication available, links with hospitals, clinics, airports, ports, ground crossings, laboratories and other key operational areas for the dissemination of information and recommendations received from WHO regarding events in the State Party's own territory and in the territories of other State Parties";

and in subparagraph (g):

"To establish, operate and maintain a National Public Health Emergency Response Plan, including the creation of multidisciplinary/multi-sectoral teams to respond to events that may constitute a public health emergency of international concern;"

Under "B. Core capacity requirements for designated airports, ports and ground crossings" the following capacities are identified:

- "(a) to provide access to:
 - (i) an appropriate medical service including diagnostic facilities located so as to allow the prompt assessment and care of ill travellers, and
 - (ii) adequate staff, equipment and premises;
- (b) to provide access to equipment and personnel for the transport of ill travellers to an appropriate medical facility;
- (c) to provide trained personnel for the inspection of conveyances;
- (d) to ensure a safe environment for travellers using point of entry facilities, including potable water supplies, eating establishments, flight catering facilities, public washroom, appropriate solid and liquid waste disposal services and other potential risk areas, by conducting inspection programs, as appropriate; and
- (e) to provide as far as practicable a programme and trained personnel for the control of vectors and reservoirs in and near points of entry."

In addition it is provided under subparagraph 2 dealing with "designated airports, ports and ground crossings":

- "2. For responding to events that may constitute a public health emergency of international concern.

The capacities:

- (a) to provide appropriate public health emergency response by establishing and maintaining a public health emergency contingency plan, including the nomination

of a co-ordinator and contact points for relevant point of entry, public health and other agencies and services;

- (b) to provide assessment of and care for affected travellers or animals by establishing arrangements with local medical and veterinary facilities for their isolation, treatment and other support services that may be required;
- (c) to provide appropriate space, separate from other travellers, to interview suspect or affected persons;
- (d) to provide for the assessment and, if required, quarantine of suspect travellers, preferably in facilities away from the point of entry;
- (e) to apply recommended measures to dis-insect, de-rat, disinfect, decontaminate or otherwise treat baggage, cargo, containers, conveyances, goods or postal parcels including, when appropriate, at locations specially designated and equipped for this purpose;
- (f) to apply entry or exit controls for arriving and departing travellers; and
- (g) to provide access to specially designated equipment, and to trained personnel with appropriate personal protection for the transfer of travellers who may carry infection or contamination".

The Convention on the Facilitation of Maritime Traffic (FAL Convention) 1965

This Convention was adopted on the 9th April 1965 and entered into force on the 5th March 1967. Its purpose is to facilitate maritime transport by simplifying and minimising formalities, documentary requirements and procedures associated with the arrival, stay and departure of ships engaged on international voyages (see Articles I, II, III and IV in particular). Section 2 of the Annex to this Convention contains provisions dealing with the "Arrival, stay and departure of the ship". In subsection H, paragraphs 2.20 - 2.27 there are "Special measures of facilitation for ships calling at ports in order to put ashore sick or injured crew members, passengers, persons rescued at sea or other persons for emergency medical treatment". Paragraph 2.27 provides "Standard. Emergency medical treatment and measures for the protection of public health shall take precedence over any controlled measures which public authorities may apply to sick or injured persons being put ashore."

Section 3 deals specifically with the "Arrival and departure of persons", that is crew and passengers on the arrival and departure of a ship.

Paragraph 3.8 reads as follows:

"Recommended practice. Medical examinations of persons on board or persons disembarking from ships should normally be limited to those persons arriving from an area infected with quarantinable diseases within the incubation period of the disease concerned (as stated in the International Health Regulations). Additional medical examination may, however, be required in accordance with the International Health Regulations."

There are particular provisions in section D headed "Facilitation for ships engaged on cruises and for cruise passengers" including:

"3.20 Standard. Public authorities shall authorise granting of pratique by radio to a cruise ship when, on the basis of information received from it, prior to its arrival, the health authority for the intended port of arrival is of the opinion that its arrival will not result in the introduction or spread of a quarantinable disease.

..."

3.30 Recommended practice. The Maritime Declaration of Health should be the only health control necessary for cruise passengers."

Section 6 dealing with "Public Health and Quarantine, including sanitary measures for animals and plants" contains the following:

"6.4 Recommended practice. Public authorities should whenever practicable authorise granting of pratique by radio to a ship when, on the basis of information received from it prior to its arrival, the health authority for the intended port of arrival is of the opinion that its arrival will not result in the introduction or spread of a quarantinable disease. Health authorities should as far as practicable be allowed to join a ship prior to entry of a ship into port.

6.4.1 Standard. Public authorities shall seek the co-operation of ship owners to ensure compliance with any requirement that illness on a ship is to be reported promptly by radio to health authorities for the port for which the ship is destined, in order to facilitate provision for the presence of any special medical personnel and equipment necessary for health procedures on arrival.

6.8 Recommended practice. Public authorities should maintain, at as many ports as feasible, adequate facilities for the administration of public health, animal and agricultural quarantine measures.

6.9 Standard. There shall be maintained, readily available at as many ports in the State as feasible, such medical facilities as may be reasonable and practicable for the emergency treatment of crews and passengers.

6.10 Standard. Except in the case of an emergency constituting a grave danger to public health, a ship which is not infected or suspected of being infected with a quarantinable disease shall not, on account of any other epidemic disease, be prevented by the health authorities for a port from discharging or loading cargo or stores or taking on fuel or water."

ILO MLC 2006

Regulation of 4.1 "Medical Care On Board Ship and Shore" contains the following provisions:

"Purpose:

To protect the health of seafarers and ensure their prompt access to medical care on board ship and shore.

1. Each Member shall ensure that all seafarers on ships that fly its flag are covered by adequate measures for the protection of their health and that they have access to prompt and adequate medical care whilst working on board.
2. The protection and care under paragraph 1 of this Regulation shall, in principle, be provided at no cost to the seafarers.
3. Each Member shall ensure that seafarers on board ships in its territory who are in need of immediate medical care are given access to the Member's medical facilities onshore.
4. The requirements for on-board health protection and medical care set out in the Code include standards for measures aimed at providing seafarers with health protection and medical care as comparable as possible to that which is generally available to workers ashore".

Standard A4.1 "Medical care on board ship and ashore" draws attention to the International Convention on Standards of Training, Certification and Watch Keeping for Seafarers, 1978; as amended (STCW) and the requirements for medical training and facilities on board.

Guideline B4.1.3 - "Medical Care Ashore" provides as follows:

- "1. Shore-based medical facilities for treating seafarers should be adequate for the purposes. The doctors, dentists and other medical personnel should be properly qualified.
2. Measures should be taken to ensure that seafarers have access when in ports to;
 - (a) outpatient treatment for sickness and injury;
 - (b) hospitalisation where necessary; and
 - (c) facilities for dental treatment, especially in cases of emergency.

3. Suitable measures should be taken to facilitate the treatment of seafarers suffering from disease. In particular, seafarers should be promptly admitted to clinics and hospitals ashore, without difficulty and irrespective of nationality or religious belief, and, whenever possible, arrangements should be made to ensure, when necessary, continuation of treatment to supplement the medical facilities available to them."

Guideline B4.1.4 "Medical assistance to other ships and international cooperation" draws attention to the International Convention on Maritime Search and Rescue, 1979, as amended, and the International Aeronautical and Maritime Search and Rescue (IAMSAR) Manual.

ANNEX 1

**A. CORE CAPACITY REQUIREMENTS FOR SURVEILLANCE
AND RESPONSE**

1. States Parties shall utilize existing national structures and resources to meet their core capacity requirements under these Regulations, including with regard to:

- (a) their surveillance, reporting, notification, verification, response and collaboration activities; and
- (b) their activities concerning designated airports, ports and ground crossings.

2. Each State Party shall assess, within two years following the entry into force of these Regulations for that State Party, the ability of existing national structures and resources to meet the minimum requirements described in this Annex. As a result of such assessment, States Parties shall develop and implement plans of action to ensure that these core capacities are present and functioning throughout their territories as set out in paragraph 1 of Article 5 and paragraph 1 of Article 13.

3. States Parties and WHO shall support assessments, planning and implementation processes under this Annex.

4. At the local community level and/or primary public health response level

The capacities:

- (a) to detect events involving disease or death above expected levels for the particular time and place in all areas within the territory of the State Party; and
- (b) to report all available essential information immediately to the appropriate level of health-care response. At the community level, reporting shall be to local community health-care institutions or the appropriate health personnel. At the primary public health response level, reporting shall be to the intermediate or national response level, depending on organizational structures. For the purposes of this Annex, essential information includes the following: clinical descriptions, laboratory results, sources and type of risk, numbers of human cases and deaths, conditions affecting the spread of the disease and the health measures employed; and
- (c) to implement preliminary control measures immediately.

5. At the intermediate public health response levels

The capacities:

- (a) to confirm the status of reported events and to support or implement additional control measures; and
- (b) to assess reported events immediately and, if found urgent, to report all essential information to the national level. For the purposes of this Annex, the criteria for urgent events include serious public health impact and/or unusual or unexpected nature with high potential for spread.

6. At the national level

Assessment and notification. The capacities:

- (a) to assess all reports of urgent events within 48 hours; and
- (b) to notify WHO immediately through the National IHR Focal Point when the assessment indicates the event is notifiable pursuant to paragraph 1 of Article 6 and Annex 2 and to inform WHO as required pursuant to Article 7 and paragraph 2 of Article 9.

Public health response. The capacities:

- (a) to determine rapidly the control measures required to prevent domestic and international spread;
- (b) to provide support through specialized staff, laboratory analysis of samples (domestically or through collaborating centres) and logistical assistance (e.g. equipment, supplies and transport);
- (c) to provide on-site assistance as required to supplement local investigations;
- (d) to provide a direct operational link with senior health and other officials to approve rapidly and implement containment and control measures;
- (e) to provide direct liaison with other relevant government ministries;
- (f) to provide, by the most efficient means of communication available, links with hospitals, clinics, airports, ports, ground crossings, laboratories and other key operational areas for the dissemination of information and recommendations received from WHO regarding events in the State Party's own territory and in the territories of other States Parties;
- (g) to establish, operate and maintain a national public health emergency response plan, including the creation of multidisciplinary/multisectoral teams to respond to events that may constitute a public health emergency of international concern; and
- (h) to provide the foregoing on a 24-hour basis.

**B. CORE CAPACITY REQUIREMENTS FOR DESIGNATED AIRPORTS,
PORTS AND GROUND CROSSINGS**

1. At all times

The capacities:

- (a) to provide access to (i) an appropriate medical service including diagnostic facilities located so as to allow the prompt assessment and care of ill travellers, and (ii) adequate staff, equipment and premises;
- (b) to provide access to equipment and personnel for the transport of ill travellers to an appropriate medical facility;
- (c) to provide trained personnel for the inspection of conveyances;
- (d) to ensure a safe environment for travellers using point of entry facilities, including potable water supplies, eating establishments, flight catering facilities, public washrooms,

appropriate solid and liquid waste disposal services and other potential risk areas, by conducting inspection programmes, as appropriate; and

(e) to provide as far as practicable a programme and trained personnel for the control of vectors and reservoirs in and near points of entry.

2. For responding to events that may constitute a public health emergency of international concern

The capacities:

(a) to provide appropriate public health emergency response by establishing and maintaining a public health emergency contingency plan, including the nomination of a coordinator and contact points for relevant point of entry, public health and other agencies and services;

(b) to provide assessment of and care for affected travellers or animals by establishing arrangements with local medical and veterinary facilities for their isolation, treatment and other support services that may be required;

(c) to provide appropriate space, separate from other travellers, to interview suspect or affected persons;

(d) to provide for the assessment and, if required, quarantine of suspect travellers, preferably in facilities away from the point of entry;

(e) to apply recommended measures to disinsect, derat, disinfect, decontaminate or otherwise treat baggage, cargo, containers, conveyances, goods or postal parcels including, when appropriate, at locations specially designated and equipped for this purpose;

(f) to apply entry or exit controls for arriving and departing travellers; and

(g) to provide access to specially designated equipment, and to trained personnel with appropriate personal protection, for the transfer of travellers who may carry infection or contamination.